

## **REMARKS/ARGUMENTS**

The Applicants have studied the Final Office Action dated June 15, 2006. Reconsideration and allowance of the pending claims in view of the following remarks is respectfully requested.

### **Double Patenting**

The Examiner rejected Claims 1-2, 4-13, and 15-30 based on nonstatutory obviousness-type double patenting over claims 1-25 of copending Application No. 09/915,907. The Applicants believe there is no double patenting with the present invention in view claims 1-25 of the copending Application No. 09/915,907 because the present invention is patentably distinct. However, in order to quickly further prosecution, a terminal disclaimer is submitted herewith. Accordingly, with the submitted terminal disclaimer, the Examiner is respectfully requested to withdraw the rejection under the judicially created doctrine of obviousness-type double patenting in view of copending Application No. 09/915,907.

### **Rejections - 35 USC § 102**

Although paragraph 13, page 5 of the present Office Action indicates a subset of the claims rejected by the Examiner in the following paragraphs describing the rejection under 35 U.S.C. §102, the Examiner rejected Claims 1-6, 8-23, and 25-30 under 35 U.S.C. 102(e) as being anticipated by *Carlson et al.*, U. S. Patent Publication 2003/0135609 (hereinafter "Carlson").

The Applicants traverse the assertion that the Carlson reference teaches or suggests the aspects of the presently claimed invention that include the term "site." The cited portions of Carlson refer to a "topology." E.g., Office Action dated June 15, 2006, page 6, paragraph 15 (citing Carlson, page 5, paragraph 55 and page 7 paragraph 74). Carlson defines a topology as "the connections between the host bus adaptors, switches and storage devices." Carlson, page 5, paragraph 0055. The Applicants' specification defines sites by stating: "each separate geographic location is referred to as a 'site.'" Specification, page 5, line 7-8 (emphasis added).

The Applicants point out that the validating step of independent claim 1 specifies "the validating comprises determining that the node has access to the data storage device and verification that

the at least one data storage device is located at the site.” Although the “topology” database taught by the Carlson reference may include determining that the node has access to the data storage device, the Applicants assert that the teaching of Carlson does not teach or suggest “the node is associated with a site containing the data storage device” and a step of validating that also includes “verification that the at least one data storage device is located at the site” as is set forth by the independent claims of the present invention.

Determining connectivity between a host and storage devices, as taught by Carlson, is not a teaching of determining a “location,” as is claimed for the presently claimed invention. Connectivity relates to electrical communications between the host and the storage device. Verifying that “the at least one storage device is located at the site” where the node is defined in the first limitation of the independent claims to be associated with that “site” involves storing and analyzing the physical location of the devices. As compared to determining a location, the Applicants assert that it is a materially different operation to determining if there is an available electrical connectivity between two devices. The Applicants assert that these aspects of the limitations of the independent claims are not taught or suggested by the cited references. The Applicants therefore assert that the independent claims distinguish over the cited references and should be allowed.

The notion of “site” as is set forth in the independent claims is further emphasized and refined in dependent claims 3 and 14. In the rejection of claims 3 and 14, the Examiner cites portions of the Carlson reference that discuss the topology database and configuring paths between devices such as host bus adapters and storage devices. Office Action dated June 15, 2006, page 6, paragraph 17 (citing Carlson, page 7, paragraphs 0070 and 0073). The Examiner characterizes the cited portion of Carlson as disclosing “resource in a path and allocation of the additional paths to the storage devices.” *Id.* The Applicants fail to see where the Carlson reference teaches or suggests that “the node operates as part of a geographically disperse computing system group” as is set forth by claims 3 and 14. The Applicants refer to the above cited definition of “topology” as given by Carlson, which refers to “connections between” devices, and does not discuss or contemplate nodes, such as the “hosts” of Carlson, operating as part of a “geographically disperse computing system group.” The Applicants assert that operating “as

part of a geographically disperse computing system group,” when considered in combination with the “verification that the at least one data storage device is located at the site” as set forth for the presently claimed invention, distinguishes claims 3 and 14 from the cited references.

With regards to claims 8, 18, and 27, the Applicants assert that when considering these claims “as a whole,” the cited references fail to teach the claimed limitation of “determining that the node is associated with a site containing the data storage resource pool.” The Applicants reference the above arguments asserting that determining that a node has access to a storage device is not a sufficient teaching of “determining that the node is associated with a site containing the data storage resource pool.”

Further, dependent claims 8, 18 and 27 specify that the “validation,” which includes “determining that the node is associated with a site containing the data storage resource pool,” is performed “when adding a new node to a cluster resource group recovery domain.” The Applicants respectfully point out that the rejection of claims 8, 18 and 27 discussed in the Detailed Action fails to identify a teaching by the cited references of the claim limitations reciting “validating accessibility... when adding a new node to a cluster resource group recovery domain.” E.g., Office Action dated June 15, 2006, page 7, paragraph 21. The Examiner only cites purported teachings of the sub-elements of this element. The Applicants assert that the cited references, including the Mayer reference cited later in the Office Action dated June 15, 2006, fail to teach or suggest performing validation “when adding a new node to a cluster resource group recovery domain,” as is set forth by claims 8, 18 and 27.

In summary, the Applicants assert that the concept of “site” to which nodes are associated, verification that the data storage device is located at the site, that the nodes operate as one of a “geographically disperse computing system group,” and that “validating accessibility” is performed “when adding a new node to a cluster resource group recovery domain” are not taught or suggested by Carlson or by any combination of the cited references. Therefore, the rejection under 35 U.S.C. §102 should be withdrawn.

**Rejections - 35 USC § 103**

The Examiner rejected Claims 7 and 26 under 35 U.S.C. 103(a) as being unpatentable over Carlson in view of Mayer, U. S. Patent No. 6,317,815 (hereinafter Mayer). The Examiner recites 35 U.S.C. §103. The Statute expressly requires that obviousness or non-obviousness be determined for the claimed subject matter “as a whole,” and the key to proper determination of the differences between the prior art and the present invention is giving full recognition to the invention “as a whole.”

When considering the invention “as a whole,” the Applicants assert that Mayer does not teach or suggest the limitation of claim 7 and 26. The Mayer reference teaches using multiple CPUs, which include CPUs executing the OS/400 operating system, to back-up data from one storage device to another. Mayer, column 9, lines 13-33. Mayer does not teach a “primary node” and “at least one backup node” within a “cluster resource group” as is set forth by claims 7 and 26. The Applicants point out that primary nodes and backup nodes of a cluster resource group are defined in the Applicants’ specification, e.g. “A cluster resource group that is a subset of a cluster and that has a number of members typically defines one of those members as the primary member for that cluster resource group. The primary member is the primary point of access for the group and hosts the resources currently used by the group. Other members within the group that are properly configured to be able to assume functions of the primary member, i.e., nodes that have their resources properly configured to assume the functions of the primary member, are referred to as backup members.” Specification, page 2, lines 15-21.

The Applicants further assert that Mayer does not teach or suggest the claimed element specifying that “the data storage resource pool is defined as an independent auxiliary storage pool.” The Applicants respectfully assert that the Examiner has not provided an indication of where “the data storage resource pool is defined as an independent auxiliary storage pool” is taught or suggested in the cited references.

The Applicants assert that these limitations, especially when considered in combination with the limitations of independent claim 1 that are discussed above regarding “verification that the at

least one data storage device is located at the site," distinguish the invention set forth in claims 7 and 26 over the cited references. Therefore, the Applicants respectfully assert that the rejection under 35 U.S.C. 103 should be withdrawn.

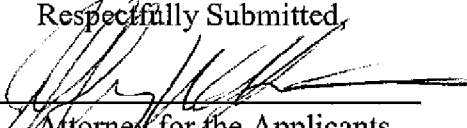
### **CONCLUSION**

The foregoing is submitted as full and complete response to the Official Action mailed June 15, 2006, and it is submitted that Claims 1-30 are in condition for allowance. Reconsideration of this application in light of the above comments is requested. Allowance of Claims 1-30 is earnestly solicited.

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No new matter has been added. It is believed that the application is now in condition for allowance, which allowance is respectfully requested.

**PLEASE CALL** the undersigned if that would expedite the prosecution of this application.

Date: August 8, 2006

Respectfully Submitted,  
By:   
Attorney for the Applicants  
Jeffrey N. Giunta  
(Reg. No. 42,583)